

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	CHAPTER 11 CASES
DIVERSE ENERGY SYSTEMS, LLC)	CASE NO. 15-34736
SCRIBNER INDUSTRIES, INC.)	CASE NO. 15-34737
DIVERSE ENERGY SYSTEMS, LLC d/b/a LEAN TECHNOLOGIES, LLC)	CASE NO. 15-34738
ROULY, INC.)	CASE NO. 15-34739
Debtors.)	Jointly Administered Under
)	Case No. 15-34736-H5-11

INTERIM ORDER AUTHORIZING USE OF CASH COLLATERAL

[Docket No. 269]

Came on for consideration the *Debtors' Motion to Extend Term of Final Order Authorizing Use of Cash Collateral and Request for Expedited Consideration* (the "Motion")¹ filed by Diverse Energy Systems, LLC ("Diverse Holdings"), Scribner Industries, Inc. ("Scribner"), Diverse Energy Systems, LLC d/b/a Lean Technologies, LLC ("Diverse"), and Rouly, Inc. ("Rouly" and, collectively with Diverse Holdings, Scribner, and Diverse, the "Debtors"). Having considered the Motion, the evidence, and the arguments of counsel, the Court finds and concludes that good cause exists to enter the following Order.

As used in this Order, the following terms have the respective meanings set forth below:

- (a) The term "Prepetition Lender" shall refer to Alerus Financial, N.A. ("Alerus");
- (b) The term "Cash Collateral" shall be deemed to include, without limitation, all "cash collateral" as defined in section 363(a) of the Bankruptcy Code, and all deposits, rents and all cash arising from the collection or conversion into cash of property of the Debtor in which

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

the Prepetition Lender or the Equipment Lenders hold a valid and perfected prepetition security interest, lien or mortgage;

(c) The term "Prepetition Lender's Collateral" shall mean all property of the Debtors in which the Prepetition Lender holds a valid and perfected a prepetition security interest, lien or mortgage;

(d) The term "Term" shall mean January 11, 2016, through and including January 22, 2016;

(e) The term "Equipment Lenders" shall refer to Fountain Leasing 2013, L.P. ("Fountain"), Grand Bank of Texas ("GBT") and Nations Fund I, LLC ("Nations");

(f) The term "Alerus Stipulation" shall refer to the *Joint Stipulation and Agreed Order Regarding Use of Cash Collateral and Adequate Protection* [Docket No. 229].

(g) The term "DIP Lender" shall mean Coyote Capital Management, LLC.

Accordingly, it is hereby ORDERED that:

1. The Motion is hereby granted on an interim basis as set forth below. Any subsequent modification, vacation or stay of this Order, or any part thereof, shall not affect any action or transfer made pursuant to this Order, including without limitation the use of the Cash Collateral by the Debtors.

2. This Order shall be effective during the Term.

3. During the Term of this Order, the Debtors are authorized to operate their business and to use Cash Collateral to pay expenses in accordance with the Budget attached hereto as **Exhibit A** for the two (2) weeks beginning respectively on January 11 and January 22, 2016. The Debtors shall have a 10% variance for items reflected in the Budget. Thus, absent the approval of the Court or the Prepetition Lender, the Debtors' actual expenses with respect to any line item entry on the Budget shall not deviate by 10% negatively from the projected line item entry (i.e., actual expenses shall not be greater than budgeted expenses by more than 10%).

4. As adequate protection for any diminution in the value of the Prepetition Lender's interest in the Prepetition Lender's Collateral caused by the use of Cash Collateral by the Debtor, the Prepetition Lender shall receive the Post-Petition Liens, Super Priority Claims, and other forms of adequate protection as defined and set forth in paragraphs 6 through 10 of the Alerus Stipulation, which are hereby incorporated by reference as if fully set forth herein. The Prepetition Lender's Post-Petition Liens shall be subject to the Permitted Exceptions as defined and set forth in the Alerus Stipulation as well as the liens and security interests granted to the DIP Lender in the *Agreed Final Order Approving Post-Petition Financing and Continuing Cash Collateral Usage* [Docket No. 171] ("Final DIP Order").

5. Notwithstanding any other provision of this Order, the Debtors shall be authorized to use Cash Collateral to pay all quarterly fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6).

6. All parties, including any equipment lessors, do not waive and hereby expressly reserve all rights under title 11 of the U.S. Code, the Orders of this Court, and applicable law regarding the determination of the amount and allowance of all claims, the provision of adequate protection of any and all interests, and all future uses of Cash Collateral other than pursuant to this Order. This Order is without prejudice to the Debtors' right to seek authorization to use Cash Collateral beyond the Term of this Order.

7. Notwithstanding anything herein to the contrary, the relief granted herein is without prejudice to any rights of the Texas Comptroller of Public Accounts to funds which do not constitute property of the estate but which may qualify as trust funds. The Comptroller is not precluded from pursuing such funds, if any, by this Order, nor is any party in interest precluded from contesting any action of the Comptroller to recover alleged trust funds. Any liens or claims granted herein are not valid or enforceable in relation to any funds which do not constitute property of the Debtors' bankruptcy estates and which qualify as trust funds. In addition, within five (5) business days of the entry of this Order: (a) Diverse shall establish a "Sales Tax Escrow

Account" ("Sales Tax Account") at an approved depository institution into which all sales taxes collected by Diverse shall be deposited; (b) once the Sales Tax Account is established, Diverse will deposit all sales tax collected by it directly into the Sales Tax Account; (c) within 48 hours of Diverse's receipt of the monthly statement for the Sales Tax Account, Diverse will provide a copy via email to counsel for the Comptroller by email to Courtney.Hull@texasattorneygeneral.gov; (d) upon one week's advance written notice to Diverse's counsel, a representative of the Comptroller may inspect the books and records of Diverse solely for the purpose of verifying the amount of the taxes and the balance of Diverse's Tax Account; and (e) Diverse shall file its sales tax returns and make payment of post-petition taxes owed to Comptroller on a timely basis as required by state law and by 28 U.S.C. §§ 959(b) and 960.

8. In the event of any conflict between the Alerus Stipulation and this Order, other than relating to the Budget and the Term of this Order, the Alerus Stipulation shall control.

DATED: January __, 2016

UNITED STATES BANKRUPTCY JUDGE

L:\BFORSHEY\Diverse Energy Systems, LLC #5759\Pleadings (Diverse BK Case) 15-34736 (TXSB)\Interim Cash Collateral Order 1.5.16.docx

EXHIBIT “A”

Cash Collateral Sources & Uses for weeks starting 12.28.15 to 02.01.16

Description	12/28/2015	1/4/2016	1/11/2016	1/18/2016	1/25/2016	2/1/2016	Total
	Budget						
Beginning Cash	331,593	48,918	114,644	(8,105)	38,477	(86,841)	331,593
***DIP Loan	-	-	-	-	-	-	-
ITS DIP Loan (advance) payment	-	-	-	-	-	-	-
Inflow:							
AR Collections - Current	277,332	274,975	239,334	226,183	229,515	229,515	1,476,854
AR Collections - New \ Misc	-	-	-	-	-	-	-
Intercompany allocations (GL, Umbrella, Property, Benefits)	20,000	-	-	-	-	-	20,000
Total Inflows	297,332	274,975	239,334	226,183	229,515	229,515	1,496,854
Outflow:							
Payroll - Direct & Shop OH	49,268	-	47,268	-	47,268	-	143,804
Payroll - SG&A	169,564	-	161,564	-	161,564	-	492,693
401k \ Health Savings	12,000	-	12,000	-	12,000	-	36,000
Materials to Purchase (current orders)	1,500	20,000	10,000	15,000	5,000	-	51,500
Materials to Purchase (new orders)	-	-	-	-	-	-	-
Bariven \ PDVSA	-	-	-	-	-	-	-
ITS charge for manufactured goods	195,000	100,000	100,000	100,000	100,000	100,000	695,000
Rents	12,741	-	-	-	-	4,741	17,482
Recurring Pymts	11,200	43,817	-	-	-	52,965	107,982
Utilities	-	26,181	12,000	350	-	26,181	64,713
Legal \ Professional fees	49,750	-	-	-	-	-	49,750
US Trustee Fees	-	-	-	-	9,750	-	9,750
General Expenses (i.e. shop expenses)	19,251	19,251	19,251	19,251	19,251	19,251	115,506
Adequate Protection Payments	-	-	-	-	-	-	-
Interest Payments on DIP Loan	18,982	-	-	-	-	-	18,982
Insurance (Health and Life)	40,750	-	-	-	-	40,750	81,500
Other	-	-	-	45,000	-	-	45,000

Total Outflows 580,007 209,249 362,083 179,601 354,833 243,888 1,929,662

Ending Cash 48,918 114,644 (8,105) 38,477 (86,841) (101,215) (101,215)

***DIP Loan proceeds are shown net of all financing fees (payable to DIP Lender), closing costs (payable to SSG) and attorney's fees (DIP Lender's counsel) detailed as follows:

DIP Loan Advance Amount -
Less: Financing Fees payable to DIP Lender -
Less: Monthly Admin Fee payable to DIP Lender -
Less: Attorney's Fees payable to DIP Lender's Counsel -
Interest on DIP loan -
Less: Closing Costs payable to SSG -
Less: Appraisal Fee (Hobbs, NM property) -
Less: 1/2 of Break Up Fee and est Attorney Fee due to RRCC (previous DIP Lender terms sheet) -
NET PROCEEDS FROM DIP LOAN ADVANCE -

Diverse & Rouly

Debtors' Ex. 03, p. 001

Cash Collateral Sources & Uses for weeks starting 12.28.15 to 02.01.16

Description	12/28/2015	1/4/2016	1/11/2016	1/18/2016	1/25/2016	2/1/2016	Total
Beginning Cash	39,425	(61)	5,330	10,049	80,943	87,462	39,425
***DIP Loan	-	-	-	-	-	-	-
Inflow:							
AR Collections - Current							
AR Collections - New							
Revenue from Diverse	195,000	100,000	100,000	100,000	100,000	100,000	695,000
Outflow:							
Payroll - Direct & Shop OH	65,000		65,000		65,000		195,000
Payroll - SG&A	11,000		11,000		11,000		33,000
401k	2,800		2,800		2,800		8,400
** Rents	-	20,000	-	-	-	-	20,000
Recurring Payments	-	-	-	-	-	-	-
Utilities	350	6,000	5,750	-	350	6,000	18,450
Materials in Manufacturing	86,687	65,360	7,483	25,856	1,333	5,000	191,718
General \ Shop Overhead expenses	3,249	3,249	3,249	3,249	3,249	3,249	19,494
Legal and Professional Fees	16,000	-	-	-	-	-	16,000
Bank Fees							
U.S. Trustee Fees	-	-	-	-	9,750	-	9,750
Intercompany allocations (GL, Umbrella, Property, Benefits)	20,000	-	-	-	-	-	20,000
Diverse Management Fee							-
Interest Payments on DIP Loan	7,000						7,000
Insurance (Health and Life, etc.)	22,400	-	-	-	-	22,380	44,780
Other	-	-	-	-	-	-	-
Total Outflows	234,486	94,609	95,282	29,105	93,482	36,629	583,592
Net Cash Flows	(61)	5,391	4,718	70,895	6,518	63,371	111,408
Ending Cash	(61)	5,330	10,049	80,943	87,462	150,833	150,833

***DIP Loan proceeds are shown net of all financing fees (payable to DIP Lender), closing costs (payable to SSG) and attorney's fees (DIP Lender's counsel) detailed as follows:

DIP Loan Advance/(Repayment) Amount -

Less: Financing Fees payable to DIP Lender -

Less: Monthly Admin Fee payable to DIP Lender -

Less: Attorney's Fees payable to DIP Lender's Counsel -

Less: Closing Costs payable to SSG -

Less: 1/2 of Break Up Fee and est Attorney Fee due to RRCC (previous DIP Lender terms sheet) -

NET PROCEEDS FROM DIP LOAN ADVANCE -

Debtors' Ex. 03, p. 002

ITS

Cash Collateral Sources & Uses for weeks starting 12.28.15 to 02.01.16

Description	12/28/2015	1/4/2016	1/11/2016	1/18/2016	1/25/2016	2/1/2016	Total
Beginning Cash	371,018	48,858	119,974	1,944	119,421	620	371,018
***DIP Loan	-	-	-	-	-	-	-
Inflow:							
AR Collections - Current	277,332	274,975	239,334	226,183	229,515	229,515	1,476,854
AR Collections - New \ Misc	-	-	-	-	-	-	-
Total Inflows	277,332	274,975	239,334	226,183	229,515	229,515	1,476,854
Outflow:							
Payroll - Direct & Shop OH	114,268	-	112,268	-	112,268	-	338,804
Payroll - SG&A	180,564	-	172,564	-	172,564	-	525,693
401k \ Health Savings	14,800	-	14,800	-	14,800	-	44,400
Materials to Purchase (current orders)	88,187	85,360	17,483	40,856	6,333	5,000	243,218
Materials to Purchase (new orders)	-	-	-	-	-	-	-
Bariven \ PDVSA	-	-	-	-	-	-	-
Rents	12,741	20,000	-	-	-	4,741	37,482
Recurring Pymts	11,200	43,817	-	-	-	52,965	107,982
Utilities	350	32,181	17,750	350	350	32,181	83,163
Legal \ Professional fees	65,750	-	-	-	-	-	65,750
US Trustee	-	-	-	-	19,500	-	19,500
General Expenses (i.e. shop expenses)	22,500	22,500	22,500	22,500	22,500	22,500	135,000
Adequate Protection Payments	-	-	-	-	-	-	-
Interest Payments on DIP Loan	25,982	-	-	-	-	-	25,982
Insurance (Health and Life, etc.)	63,150	-	-	-	-	63,130	126,280
Other	-	-	-	45,000	-	-	45,000
Contingency	-	-	-	-	-	-	-
Total Outflows	599,492	203,858	357,365	108,706	348,315	180,517	1,796,254
Ending Cash	48,858	119,974	1,944	119,421	620	49,618	49,618

***DIP Loan proceeds are shown net of all financing fees (payable to DIP Lender), closing costs (payable to SSG) and attorney's fees (DIP Lender's counsel) detailed as follows:

DIP Loan Advance/(Repayment) Amount	-
Less: Financing Fees payable to DIP Lender	-
Less: Monthly Admin Fee payable to DIP Lender	-
Less: Attorney's Fees payable to DIP Lender's Counsel	-
Interest on DIP loan	-
Less: Closing Costs payable to SSG	-
Less: Appraisal fee (Hobbs, NIM property)	-
Less: Break Up Fee and est Attorney Fee due to RRCC (previous DIP Lender terms sheet)	-
NET PROCEEDS FROM DIP LOAN ADVANCE	-

Debtors' Ex. 03, p. 003

Consolidated